

## Chapter 6—Contribution Restrictions

Although the Political Reform Act is primarily a disclosure law, there are several important restrictions and prohibitions on receiving contributions. This chapter reviews these restrictions and prohibitions, as well as some that are contained in laws other than the Political Reform Act. For restrictions and prohibitions related to expenditures made with campaign funds, see Chapter 7.

### A. Restrictions under the Political Reform Act

#### Reporting the True Donor

As noted throughout the manual, if a contribution of \$100 or more is received from a single source in a calendar year, the source must be identified on the committee's Form 460. If a contribution is received through an intermediary, both the intermediary and the true source of the contribution must be identified. (See Chapter 4 for additional information about intermediaries.)

Failure to disclose the true source of a contribution is often referred to in media reports as campaign money laundering, which is a serious violation of the Act. The campaign reports, which list donors to the committee, are often the only means for the press and public to determine who is supporting or opposing a ballot measure.

One type of common violation is when an employer reimburses individual employees for contributions so that the committee receiving the contributions discloses the employees rather than the true source of the contribution (the employer) on campaign disclosure reports.

Another occurrence is when a person (organization, business, individual) makes a contribution to another person with the condition, agreement, or understanding that the payment will be subsequently used for political purposes, such as a contribution to another committee. It is a violation for persons to conceal their identities by contributing through another person.

Committee treasurers must inquire about any information that would cause a person of reasonable prudence to question based on all available information. It is not possible to describe every situation that might trigger a duty for a treasurer to inquire if a contribution is identified correctly; however, some examples are a contribution's size from the reported source, the likelihood of that source making a contribution of the size reported, and all other circumstances surrounding receipt of the funds.

If it is discovered that a committee received a contribution and the donor and intermediary were not properly identified, the contribution must be paid to the Secretary of State for deposit in the State General Fund. A local agency may deposit laundered funds into its general fund when the action is brought under its local campaign finance ordinance.

*[Example] A committee receives contributions of \$5,000 each from ten different individuals in the same week. The committee treasurer and campaign fundraiser did not make specific solicitations to the individuals. Upon request, the individuals state that they all work for the same employer. The committee treasurer has a duty to inquire to determine if the employer reimbursed the employees.*

## **Cash Contributions**

A committee may not accept a cash contribution of \$100 or more. Such a contribution may be returned to the contributor prior to the end of the reporting period, provided the cash was not previously deposited or spent. A cash contribution that is inadvertently deposited into the committee bank account must be refunded within 72 hours of receipt.

[Quick Tip] Even if change is immediately provided, a committee may not accept \$100 or more in cash from a single source. For example, if the committee is holding a fundraiser and charging \$50 per person, an attendee may not pay with a \$100 bill. The payment must be made by personal check, debit card, or credit card.

## **Anonymous Contributions**

Anonymous contributions of \$100 or more are prohibited. If the committee receives a cash contribution of \$100 or more from an unknown source, it must be sent to the Secretary of State for deposit in the State General Fund.

## **Contributor's Legal Name**

Contributions must be made in the name by which the contributor is identified for legal purposes.

## **Commingling Funds**

Campaign funds may not be commingled with an individual's personal funds and may not be used for personal expenses. Campaign funds must be kept in an account separate from any account that contains personal funds.

## **Contributions Made by Money Orders/Cashier's Checks/Traveler's Cheques**

All monetary contributions of \$100 or more must be made by written instrument (such as a check) containing the name of the donor and drawn from the account of the donor or the intermediary.

Contributions of \$100 or more made by money order, cashier's check, or traveler's cheque are prohibited and must be returned to the contributor, or, if made anonymously, sent to the Secretary of State for deposit in the State General Fund.

Contributions may be received by credit card (including over the Internet), wire transfer, or other electronic means. (See Chapter 4.)

## **Contributions Delivered in State Office Buildings**

A contribution may not be delivered personally, or through an agent, in the State Capitol or any other state office building for which the State of California pays the majority of the rent. "Personally delivered" includes the delivery of a copy or facsimile of a contribution, and the original or a copy of a contribution transmittal letter. This prohibition does not apply to contributions received or delivered in a legislative district office or those sent by mail.

## **Contribution Limits**

Chapter 5 includes a detailed discussion about contribution limits to state candidate controlled committees and committees that make contributions to state candidates. In

addition, the contribution limits chart is available on the FPPC website. Local committees should consult with the city clerk or county elections office to determine if local limits apply in the jurisdiction.

### **State Lobbyists**

A lobbyist may not make a contribution to an elected state officer or a candidate for elective state office if the lobbyist is registered to lobby the governmental agency for which the candidate is seeking election or the governmental agency of the elected state officer.

A general purpose committee that receives personal funds from a lobbyist and includes the lobbyist in decisions regarding the making of contributions is also prohibited from making contributions to state candidates who are seeking or holding an office of an agency the lobbyist is registered to lobby.

A lobbyist is not prohibited from advising his or her clients (including sponsored general purpose committees) regarding the making of contributions to state candidates.

### **Contributions From Foreign Governments or Foreign Principals**

Committees are prohibited from soliciting or accepting contributions from a foreign government or foreign principal in connection with a candidate or ballot measure in any state or local election. (2 U.S.C. S 441e and Government Code Section 85320 of the Act.)

For purposes of this prohibition, a “foreign principal” includes:

- A foreign political party.
- An individual outside the United States, unless the individual is a United States citizen.
- A corporation outside of the United States, unless it is organized or created by the laws of the United States or any place subject to the jurisdiction of the United States, and its principal place of business is within the United States.
- A partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.
- A foreign partnership, association, corporation, or organization.
- A domestic subsidiary of a foreign corporation if the decision to contribute or expend funds is made by an officer, director, or management employee of the foreign corporation who is not a citizen of the United States or a law permanent resident of the United States.

Contributions, expenditures, or independent expenditures made by a lawfully-admitted permanent resident (e.g., a “green card” holder) of the United States are permitted.

## **B. Public Funds and Public Resources**

The Political Reform Act prohibits the payment of public moneys, in the form of matching funds or cash subsidies, for the financing of elections, except for elections in charter cities and counties.

In addition, laws outside the Act prohibit the use of public resources, such as office equipment, staff time, etc., for campaign or personal purposes. (Education Code Section 7054; Gov. Code Section 8314; Penal Code Section 426; and *Vargas v. City of Salinas* (2009) 46 Cal 4<sup>th</sup> 1.)

Government Code Section 54964 restricts an officer, employee, or consultant of a local agency from expending or authorizing the expenditure of any local agency funds to support or oppose a ballot measure or a candidate. For further information on laws outside the Act, contact the Attorney General's office at (800) 952-5225 or your district attorney.

## **Authority**

The following Government Code sections and Title 2 regulations provide authority for the information in this chapter:

### **Government Code Sections**

- 84300 *Cash and In-Kind Contributions; Cash Expenditures.*
- 84301 *Contributions Made Under Legal Name.*
- 84302 *Contributions by Intermediary or Agent.*
- 84304 *Anonymous Contributions.*
- 84307 *Commingling with Personal Funds.*
- 84309 *Transmittal of Campaign Contributions in State Office Buildings.*
- 84607 *Prohibition Against Political or Campaign Use.*
- 85320 *Foreign Entities.*
- 85701 *Laundered Contributions.*
- 85702 *Contributions from Lobbyists.*

### **Title 2 Regulations and Opinions**

- 18432.5 *Intermediary.*
- 18439 *Definition of "Personally Deliver."*
- 18572 *Lobbyist Contributions-Making a Contribution Defined.*

*Pelham Opinion (2001) 15 FPPC Ops 1.*